

Approved March 22, 2006



**SCOTTSDALE PLANNING COMMISSION
CITY HALL KIVA
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
MARCH 8, 2006**

REGULAR MEETING MINUTES

PRESENT: Steve Steinberg, Chairman
James Heitel, Vice-Chairman
David Barnett, Commissioner
Kevin O'Neill, Commissioner
Eric Hess, Commissioner
Jeffrey Schwartz, Commissioner
Steven Steinke, Commissioner

STAFF PRESENT: Lusia Galav
Sherry Scott
Tim Curtis
Mac Cummins
Kira Wauwie
Frank Gray
Donna Bronski
Sherry Scott
Randy Grant
Dave Meinhart
Teresa Huish

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:09 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

APPROVED

MINUTES REVIEW AND APPROVAL

1. February 22, 2006 (including Study Session)

Commissioner Barnett requested a verbatim transcript of the February 22, 2006 regular meeting.

COMMISSIONER BARNETT MOVED TO APPROVE THE MINUTES OF THE FEBRUARY 22, 2006 PLANNING COMMISSION STUDY SESSION AS WRITTEN AND THE VERBATIM TRANSCRIPT OF THE FEBRUARY 22, 2006 PLANNING COMMISSION HEARING, WHICH WILL INCLUDE TEXT AMENDMENTS. SECONDED BY COMMISSIONER HEITEL, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

CONTINUANCES

2. 1-UP-2006 Tanners

Request by owner for a conditional use permit for a bar in an existing 4000+/- square feet building located at 6990 E. Shea Blvd. Ste 101 with Central Business District (C-2) zoning.

3. 2-TA-2006 ESL Text Amendment

Request by City of Scottsdale, applicant, for a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455), to amend Article VI. Supplementary District., Section. 6. 1083. Amended Development Standards and Section. 6. 1090. ESL submittal Requirements. The purpose of this text amendment is to amend the exemption process related to the 15 feet setback for walls on individual residential lots.

4. 20-AB-2005 Colaric Abandonment

Request by owner to abandon the right-of-way for the entire alley behind 6446-6532 E Calle Del Media.

Mr. Don Carson addressed the Commission, noting difficulty arranging a meeting with the Applicant and with staff members to discuss the situation; difficulty he and the other neighbors had retaining an attorney; and attempts to gain a continuance. He clarified that the neighbors do not want traffic running through the cul-de-sac. Mr. Carson requested a continuance because the neighborhood was only recently able to secure an attorney and time would be needed to compile information needed for the Commission to make an informed decision.

Mr. John Colton, who has lived in the neighborhood since 1964, addressed the Commission. Mr. Colton has power-of-attorney for Mr. Colaric in his absence. He opined that the City's direct responsibility is to protect the interests of the residents in the neighborhood. He noted that staff did not respond to correspondence sent by him to the Planning Department in October of 2005.

APPROVED

Ms. Ellen VanRiper, attorney representing the Calle Del Media Owner's Coalition and Mr. Colton, thanked the Commission for granting a continuance in order to allow time for resolution between the parties.

Ms. Wendy Riddell, law firm of Berry and Damore addressed the Commission. She clarified that Mr. Colaric and the neighborhood coalition are the Applicants in this case and opined that it is their responsibility to talk to the neighbors and the City in order to expedite the application. She requested that the matter be continued to no later than the first hearing in April, which she opined would be sufficient time to work out a resolution.

Commissioner Schwartz requested that Ms. Riddell take the responsibility of notifying all of the parties in order to arrange for discussion. Ms. Riddell ensured that she would follow through with any necessary meetings in the case.

**COMMISSIONER BARNETT MOVED TO CONTINUE 1-UP-2006,
CONDITIONAL USE PERMIT FOR A BAR TO THE APRIL 19, 2006
PLANNING COMMISSION MEETING;**

**2-TA-2006, THE ESL TEXT AMENDMENT TO THE MARCH 22, 2006
PLANNING COMMISSION MEETING;**

**AND 20-AB-2005, THE COLARIC ABANDONMENT, TO THE APRIL 19, 2006
PLANNING COMMISSION MEETING. SECONDED BY VICE-CHAIRMAN
HEITEL, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN
(7) TO ZERO (0).**

INITIATION

5. Non-conforming Standards Text Amendment (151-PA-2006): Request to initiate a text amendment to Article I. Administration and Procedures, Section 1.1300 Nonconforming Uses and Structures of the City of Scottsdale Zoning Ordinance (455).

**COMMISSIONER SCHWARTZ MOVED TO INITIATE THE NON-
CONFORMING STANDARDS TEXT AMENDMENT, 151-PA-2006.
SECONDED BY COMMISSIONER HESS, THE MOTION CARRIED
UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).**

6. General Plan Amendment: Request to initiate a non-major General Plan Amendment for a text amendment to the Community Mobility Element in support of continuing light rail along the Scottsdale Road Corridor.

Mr. Gray cited the request by the Planning Commission to consider the issue of light rail on Scottsdale Boulevard to McDowell. In order for the Commission to have a basis for a decision, representatives of the Transportation Division were present to talk about the existing adopted plans that are in place, activities which would affect the language of an amendment, and to present information regarding the issue of transit along the entire Scottsdale corridor. He noted that there are currently a series of hearings being conducted by the Transportation Commission regarding light rail. He suggested that a joint meeting be held

APPROVED

between the Planning Commission and the Transportation Commission in order to collaborate on the message to be sent forward to City Council.

Dave Meinhart, Transportation Planning and Transit Director, addressed the Commission. He mentioned that the Transportation Department is completing the Transportation Master Plan along with a high capacity transit study focusing on the Scottsdale Road Corridor which will recommend technologies to be used in that corridor.

Mr. Meinhart reviewed the modal plans which are being updated in the Master Plan. He noted that when City Council adopted a major investment study for transit improvements in 2003, they approved Scottsdale Road as the primary corridor for mass transit, but did not recommend specific technology. Part of the approach being taken by the Transportation Department is to come up with technology recommendations.

Mr. Meinhart explained that the Transportation Department is conducting the initial data collection phase which will be done through small group interviews, informational workshops, followed by a three day public workshop in April, in order to obtain feedback on which modes should be featured in each part of town. During the summer months, the collected information, as well as feedback from Boards and Commissions, will be used to develop alternatives. The noted alternatives will be brought to another public workshop in the fall and to City Council towards the end of 2006 or early 2007.

Mr. Meinhart reported that discussions concerning high capacity transit have been initiated with Valley Metro Rail and the Cities of Tempe and Phoenix. The Transportation Department is working on the purpose and needs a statement which will be used for identifying possible alternatives; a key element of the process when trying to acquire federal funds for high capacity transit improvements. He noted that the Transportation Department is anxious to receive input from the Planning Commission; not only on the high capacity element, but on the entire Master Plan.

In response to a question by Chairman Steinberg, Mr. Meinhart clarified that there have not been any proposals to implement alternative modes of transportation on sections of Scottsdale Road which are currently in the five-year capital improvement plan for widening. Mr. Meinhart reiterated that as part of the major investment study in 2002-2003, light rail plans were to go through the Scottsdale Road Corridor, travel lanes would drop from six to four, with the median and portions of the inside lanes being used.

In response to an inquiry by Commissioner Heitel, Mr. Meinhart stated that the Transportation Department would like to have a joint meeting between the Planning Commission and the Transportation Commission in May and use the information collected during the public input sessions to frame the discussion. The Transportation Department would like to return to Planning Commission study sessions in order to provide information and receive further input as the planning process continues.

Commissioner Schwartz expressed his understanding that the Transportation Master Plan can be updated since it is part of the General Plan. He clarified that he would like to see a parallel track with workshops and discussions continuing while the study is in progress. He opined that Scottsdale needs to take part in light rail now so the City is not left behind; stressing that Skysong has no regional connection. Commissioner Schwartz mentioned that money is being spent on the capital improvement project for Scottsdale Road and McDowell without consideration for the possibility of light rail.

Mr. Meinhart explained that the improvement plan for the Scottsdale Corridor consists of streetscape, bicycle and pedestrian improvements, which means virtually all of the work will be done behind the existing curbs.

Commissioner Schwartz opined that the City is not addressing all of the factors comprehensively: the redevelopment of Scottsdale Road, the impact and importance of light rail, and spending money wisely. He stated that, understanding the process of applying for updates to the General Plan, it would be smart to start the process discussing light rail in general and narrow the focus as discussions go further.

In response to a question by Commissioner Barnett, Mr. Meinhart explained that his presentation did not speak only of light rail because the decision made in 2003 for identifying Scottsdale Road's high capacity corridor did not specify the technology. The Transportation Department must analyze what the issues and options are and where the money will come from, in order to proceed with the most appropriate technology. He reviewed that City Council recommended giving further consideration to bus rapid transit, modern streetcar, and light rail, and noted that the plan is being built off of the objectives and goals that are already in the community mobility element of the General Plan. He noted that if light rail were selected today, it would be a minimum of ten years before construction because of the costs involved, planning, designing, and utility relocations; which is why streetscape work is being continued on Scottsdale Road.

In response to an inquiry by Commissioner Barnett, Mr. Meinhart opined that adding light rail would be a minor General Plan amendment because the General Plan identifies Scottsdale Road as a regional corridor, which anticipates that any form of transit could be used.

Mr. Gray suggested that in addition to looking at the different types of technology, phasing of the technology as it becomes appropriate for certain areas should be considered.

Commissioner Barnett asked why discussions suggest beginning in South Scottsdale and moving north when the Airpark is one of the biggest employment centers in the State. He opined that starting in the north and moving south should be considered. Mr. Gray explained that discussions of light rail from south to north is due to the Phoenix system that has extended to the south. He explained that if bus rapid transit were to be considered, it would make sense to bring it down to the Airpark immediately. With regard to light rail, the Federal

Government looks at riders-per-mile of track, which is one of the things being studied by the Transportation Department.

Mr. Meinhart remarked that in the Maricopa Association of Government's Regional Transportation Plan a rail extension is proposed which would go from Central Phoenix up to the Paradise Valley Mall vicinity. One of the scenarios being reviewed within Scottsdale's Master Plan is linking the activity node at the Paradise Valley Mall and the Airpark. Another option would be connecting to the express bus service on the Loop 101, which will be in place as the high occupancy vehicle lanes are constructed on the freeway.

Teresa Huish addressed the Commission. She reviewed the process that the Transportation Department went through when updating the General Plan in December, 2001. She discussed revisions that were made to the General Plan; highlighting the map revisions in which the individual elements of the circulation element were removed from the maps and consolidated with other goals into a comprehensive guide.

Ms. Huish stated that the community mobility element has the role of containing the policies that concentrate on providing safe, efficient, and accessible mobility choices. She discussed the vision statement that has been added to the General Plan which talks about having a diversity of mobility systems, mobility choices, and addressing differing lifestyles. Goals and approaches have been broken down into region system, citywide system, and local system.

Ms. Huish will provide Commissioners with a copy of the map on which she depicted possible locations to be included in a text amendment for encouraging high capacity transit. Text in the General Plan could be augmented with a community mobility element amendment since the Transportation Plan is underway.

Mr. Grant informed the Planning Commission that Ms. Huish developed some text which she thought might be most appropriate to include in the text amendment. He suggested that if the proposed text reflects the Commissions' interests, a draft of the text amendment can be presented at the next meeting.

In response to a question by Commissioner Schwartz, Mr. Gray explained that the proposed text amendment would be considered a minor amendment, but would still require approval from City Council.

Ms. Huish identified that there are several approaches which talk about regional corridors and mobility choices, noting that one in particular talks about embracing future modes and methods of moving people, goods, and information. She suggested adding "such as light rail, bus rapid transit, modern street car, or something else that might come from the high capacity transit study". Another approach suggested: "design the high capacity transit corridor of Scottsdale Road to accommodate the technology or technologies determined in the Transportation Master Plan".

In response to an inquiry by Commissioner Schwartz, Ms. Huish clarified that the Transportation Master Plan is adopted by the City Council, following a

recommendation by the Transportation Commission and other Boards and Commissions.

Chairman Steinberg remarked that as future applications along Scottsdale Road come through, the Planning Commission would appreciate staff guidance for looking at those with the idea of light rail or other modes of transportation in mind. Mr. Gray stated that as the Transportation Master Plan is adopted, it will be a guiding document to use for development review.

Ms. Bronski addressed the Commission in order to clarify structural procedural differentiation between the Planning Commission and the Transportation Department and Commission. She noted that the General Plan has been restructured since adopted in 2001 to be more of a policy document. The implementation of those general policies is delegated to the Transportation Commission and Transportation Department. She presented a statement that is posted on the City website, which provides more information about the Transportation Master Plan. She explained that the Transportation Master Plan process began based on the principles set forth on the General Plan and is an implementing process and document.

Ms. Bronski opined that the best way to effectuate Commissioner Schwartz's intent would be to add something to the mobility element of the General Plan that sets light rail as a goal, which could then be implemented as part of the Transportation Master Plan process. Because the action is a minor General Plan amendment under the criteria, there would only need to be one hearing before the Planning Commission and then would require only a majority at City Council for adoption.

In response to inquiry by Chairman Steinberg, Ms. Bronski explained that there are no specific statements in the City Code which specify that the Transportation Commission must confer with the Planning Commission. She opined that there is a section in the provision which talks about the Street Master Plan Concept Report and making comments and recommendations, and the Street Master Plan is part of that process.

In response to an inquiry by Commissioner Schwartz, Ms. Bronski explained that the powers and duties of the Planning Commission listed municipal use master plans. Commissioner Schwartz argued that the powers and duties talked about the General Plan of which the Transportation Plan is a part thereof. Mr. Gray clarified that the element of the General Plan that speaks to transportation is called the mobility element of the General Plan. This element of the General Plan is not intended to be adopted as an implementation mechanism and is not a comprehensive general planning mechanism of the community.

Ms. Bronski confirmed that while amending the General Plan is one of the powers of the Planning Commission, there is nothing listed which suggests amendments to the Transportation Master Plan.

Ms. Bronski clarified that there are many links which connect the General Plan and the Transportation Master Plan, but the Transportation Master Plan is not part of the General Plan. The Transportation Master Plan is being created under

the general policies of the mobility element of the General Plan, but it is an implementing document based on the policies set forth in the General Plan.

Ms. Bronski further advised that the Planning Commission could initiate a change to the mobility element of the General Plan to set a guiding principle about light rail. Beyond that action, meetings could be arranged with the Transportation Commission in order for the Planning Commission to provide input, but the issue is the Transportation Commission's purview.

Noting that rapid transit is an important consideration for the future of Scottsdale, Chairman Steinberg stated that the Planning Commission would like to stay informed on this topic.

COMMISSIONER SCHWARTZ MOVED TO INITIATE A TEXT AMENDMENT TO UPDATE THE GENERAL PLAN MODE MOBILITY ELEMENT TO EMBRACE FUTURE MODES AND METHODS OF MOVING PEOPLE, GOODS, AND INFORMATION; INCLUDING LIGHT RAIL, BUS RAPID TRANSIT, OR MODERN STREETCAR. SECONDED BY VICE-CHAIRMAN HEITEL, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

REGULAR AGENDA

7. 19-AB-2005 Smallwood Abandonment

Request by owner to abandon the right-of-way for N. 122nd Street and the easterly portion of the right-of-way for E. Pinnacle Vista Drive including the cul-de-sac and temporary turn around.

Mr. Ward addressed the Commission. Highlights of his presentation included an aerial view of the area, a zoning map depicting the property and the Preserve, and the master planned trails. Staff is recommending approval.

Commissioner Schwartz remarked that the Planning Commission has had concerns about making decisions without knowing what future access needs will be and what other access is available. He inquired about what other opportunities there are besides the future trail depicted on the map. Mr. Ward explained that the master trails plan provides major connections to the Preserve through trail systems and provides local access to those trails. He depicted the local streets which would still provide access to the Preserve trails. The City's intent is to have the main accesses through the primary trails and trailheads located throughout the Preserve boundary.

In response to an inquiry by Commissioner Schwartz regarding the purpose of the abandonment, Mr. Ward explained that each of the three lots has adequate access from the adjoining streets and the area is not necessary for overall circulation. Commissioner Schwartz stated that he would have preferred to see the cul-de-sac go to the end in order to provide equestrian access directly into the Preserve.

Noting that a subdivision is being piecemealed, Vice-Chairman Heitel remarked that the site plan spoke directly to the issue of why the Planning Commission

APPROVED

needs to see subdivision plats. He opined that opportunities should not be given up until it is clear what the opportunities are going to be. In response inquiry by Vice-Chairman Heitel about whether the Planning Commission would be seeing the case as a subdivision case, Mr. Gray reiterated that the case is presented to the Commission as an abandonment issue.

Commissioner Steinke inquired about the meaning of the statement provided in the background information which stated: "this request is based on an agreement between the City and the Applicant for the withdrawal of an appeal to the hearing officer originating from a previous land division of an adjoining lot and required dedications of streets."

Sherry Scott explained that at the time the lots came through for approval, staff requested an additional dedication and the owner requested a hearing on an exaction for the requested dedication. Both the City and the Owner determined that it would be best to work out a resolution and abandon the portions the City was less concerned about. The City reviewed the lot split and issues a set of stipulations requesting dedications and recommending approval of the abandonment.

In response to an inquiry by Commissioner O'Neill, Mr. Ward confirmed that there would be a disconnect between two existing right-of-ways. Mr. Meinhart explained that the Transportation Department is attempting to support the goals of the Preserve Commission by minimizing the existence of roadways that are right on the Preserve boundary.

Commissioner Schwartz remarked that attachment 5 depicts an easement below the parcel. He opined that there should be maps available which depict the purpose and locations of easements in the area.

Commissioner Barnett commented that there is no greater common good for the City with the abandonment's. He opined that if the issue is important, the City should be the Applicant. Mr. Gray explained that the way the City acquires dedications or abandonment's is through the land division process. Commissioner Barnett commented that the government is there to protect rights, tell people where streets are going to go and create that master planning process. He opined that when private landowners come through piecemeal, the process ends up being significantly more expensive for the landowner.

Commissioner Steinke suggested that anytime an applicant approaches with an abandonment that enhances or fulfills a piece of the overall intent of the Plan, it should be stated as such.

Vice-Chairman Heitel asked that the Planning Commission be provided with a written document from the Preserve Commission, endorsed by City Council, definitively providing some guiding information for use in making these decisions.

VICE-CHAIRMAN HEITEL MOVED TO APPROVE 19-AB-2005, ABANDONING THE 122ND STREET SECTION, ABANDONING THE PINNACLE VISTA DRIVE SECTION AS INDICATED IN THE STAFF RECOMMENDATION, BUT RESERVING UNTO THE CITY AN INGRESS AND EGRESS EASEMENT

APPROVED

FROM THE EASTERN TERMINOUS OF THAT ABANDONED OR REMAINING PORTION OF PINNACLE VISTA TO THE PROPERTY BOUNDARY UNTIL IT IS DETERMINED THAT WE ACTUALLY ARE DOING SOMETHING THE OVERALL CITY WISHES.

Commissioner Schwartz reiterated that a map of the entire area is needed in order to make informed decisions from a holistic viewpoint.

SECONDED BY COMMISSIONER SCHWARTZ,

Chairman Steinberg clarified the stipulation that the easterly portion of East Pinnacle Vista Drive be maintained as an easement.

Commissioner Barnet expressed support for Vice-Chairman Heitel's motion, commenting that although it is not a perfect scenario, it is a fair agreement.

THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

8. 28-UP-2004 Next Bar & Nightclub

Request by owner for a conditional use permit for a bar on a 5137+/- square feet existing building located at 7111 E 5th Avenue with Central Business District Downtown Overlay (C-2 DO) zoning.

Mr. Cummins addressed the Commission. Highlights of his presentation included an aerial photograph of the surrounding area including other bar establishments, a Downtown General Plan map, and a zoning map of the area. He reiterated that there are two things required in order to have a bar establishment in the City of Scottsdale; one is a conditional use permit issued by City Council and the second is a State series six liquor license. Mr. Cummins reviewed the series of criteria set out by the zoning ordinance for acquiring a use permit.

Mr. Cummins gave a brief history of the establishment location. He explained the six criteria defining the use as a bar and reviewed the impact analysis. Staff recommended approval subject to stipulations.

In response to an inquiry by Chairman Steinberg, Mr. Cummins confirmed that parking calculations include the square footage of the entire parcel, including the second floor. The daytime catering activities at the location do not change the bar designation.

Responding to a question by Commissioner O'Neill, Mr. Cummins explained that "retail specialty" is a designation in the Downtown Plan, intended to promote retail, restaurant, and gallery uses within a low scale old west atmosphere. One of the points considered with the application should be the appropriateness of a bar use in the area.

Mr. Cummins confirmed that the reference to 450 parking spaces in the packets was a typo. He explained that the Ordinance requirement is to meet the difference required between their restaurant and their bar.

Vice-Chairman Heitel recalled that when the Downtown plans were originally discussed, daytime restaurant and nighttime bar uses were encouraged because they would draw people to the area for shopping. He expressed concern about the number of pure bars which are opening in the area, noting reports of violence and fighting. He questioned the intent of the Applicant opening a restaurant aspect in the establishment and the compatibility with the growth in the Downtown area. Mr. Cummins explained that staff would take a different approach with a new establishment. He reiterated the fact that the Applicant had a Series 12 liquor license prior to the requirement for a use permit and has since been granted a Series 6 liquor license. Although a caterer is using the restaurant portion of the establishment at this time, it is the intent of the Applicant to open a restaurant. He confirmed that the City is following up on establishments that make the promise of a restaurant and operate only as a bar.

Commissioner Barnett complimented the job performed by staff in balancing the needs of both Downtown and the Applicant in this application. He inquired about the two-year timeline for developing a business plan for the restaurant, opining that six months would be a more appropriate length of time, with a year-and-a-half review period. Mr. Cummins explained that the time period was negotiated with the Applicant. He requested that if the Commission chose to stipulate a different length of time, the use permit correlate with that time. Mr. Cummins committed that staff would research whether or not the catering business that is in operation is required to have a separate use permit.

Commissioner Steinke opined that the Applicant had taken a good, proactive, transitional approach, but he would be more comfortable with a one-year time line. In response to a question by Commissioner Steinke, Mr. Cummins confirmed that the other bars located on the street predated the use permit requirement.

In response to Commissioner Hess' concern regarding the excessive number of security guards listed, Mr. Cummins explained that those numbers are reviewed by the Police Department which is usually more concerned with numbers that are too low.

In response to Commissioner Schwartz, Mr. Grant explained that the Applicant is not using the catering business to meet any percentage of food sales; the arrangement is strictly one of convenience.

Referring to the earlier question by Commissioner Barnett, Mr. Cummins confirmed that the Downtown district does allow catering with no additional use permit.

Applicant Brian Ruede, 7337 East Citrus Way, addressed questions previously asked by Commissioners. He affirmed the intention of opening the restaurant portion. He explained that he is a partner in the catering business which is

separate from the bar and does not count towards his sales. He clarified that the Application is not really for a new use because the use has not changed.

In response to Commissioner Hess' question regarding the uniformed officers, Mr. Ruede explained the officers are actually security personnel and the number is barely ample for the size of his establishment. With regard to the number of calls for service, he noted that any minor loss or theft is recorded as a call for service and Next has an excellent record with the police department in terms of management. In closing, Mr. Ruede explained that in order to build an entirely new business plan including financing and implementation, a two-year term would be appreciated.

In response to a question by Commissioner O'Neill, Mr. Ruede explained that the location has been without a daytime use for nine years, noting that he has no windows or storefront. He opined that in order for him to develop a plan that would be harmonious with the area, two-years would not be an unreasonable amount of time.

In response to inquiry by Commissioner Hess, Mr. Ruede stated that he would need six months to put together a reasonable business plan; six to eight months to implement financing; and implementation would require shutting down for a period of time.

In response to an inquiry by Commissioner Barnett about the possibility of giving the Applicant a year and then granting continuances until he has completed his plan, Mr. Grant explained problems which have occurred in the past with that type of situation. He reiterated that City Council has the right at any time to issue a revocation of the use permit.

In response to a question by Commissioner Steinke, Mr. Ruede stated that he would have no problem with a stipulation to come back in one year and be implemented within two-years, provided the City process went smoothly.

John Little, Executive Director for Downtown, addressed the Commission. He offered a brief history of events pertaining to the context for the two-year request, noting that the Downtown Group has an interest in working with the bar owners. He opined that a two-year goal was a reasonable amount of time to implement a daytime use.

COMMISSIONER BARNETT MOVED TO SUPPORT 28-UP-2004 AS PRESENTED BY STAFF, ASSUMING IT MEETS THE CONDITIONAL USE PERMITS FOR A BAR. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

9. 1-TA-2006 Conditional Use Permit Text Amendment for
Private and Charter Schools

Request by City of Scottsdale, applicant, for a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455), to amend Article III. Definitions.; Article V. District Regulations; Section 5.012. Use Regulations.; B. Uses subject

to conditional use permit.; 8. Private and Charter schools. The purpose of this text amendment is to create a minimum spacing distance between private/charter schools on large-lot residential properties.

Randy Grant addressed the Commission. He reviewed that City Council and the Planning Commission had requested staff return with a text amendment including a spacing requirement between private and charter schools. The text amendment brought forward would change a few definitions in the definitions section and would also require a 1320-foot spacing between private and charter schools that meet the threshold. The threshold is included as a way to make a distinction between the smaller schools, which would have a limited impact on traffic patterns, and the larger schools.

Commissioner Barnett remarked that the Commission had received letters from a State representative and from the Arizona Charter Schools Association, both requesting more time to review the information. He inquired whether proceeding with the hearing at the Planning Commission level and allowing these people to present a case at City Council would be proper from a protocol standpoint. Mr. Grant stated that it would be allowed from an Ordinance standpoint and is at the Commissions discretion to table the issue. Mr. Grant noted that the letters were received five minutes before the meeting began; he reviewed the noticing process for text amendments.

In response to a question by Commissioner Schwartz regarding the number of schools in existence that would be affected by this requirement, Mr. Grant explained that there are none in the large lot residential zoning districts that would be prohibited.

In response to a question by Commissioner O'Neill, Mr. Grant confirmed that without this text amendment and the distancing requirements, a charter school would still have to go forward with a use permit. Use permits are presented to the Planning Commission for consideration.

In response to an inquiry by Vice-Chairman Heitel, Mr. Grant clarified that the focus at the current meeting was strictly to discuss spacing issues.

In response to inquiries by Chairman Steinberg regarding the effective date of the proposed text amendment, Mr. Grant explained that ordinances typically become effective thirty days after Council approval.

In response to an inquiry by Commissioner Schwartz concerning any applications currently in the process, Mr. Grant noted that there is one application for a private swim school which would be coming through as a use permit and would not be affected by the amendment.

In response to a concern by Commissioner Barnett about restrictions forcing schools into neighborhoods or secondary streets, Mr. Grant opined that schools have moved more to arterial streets. He stated that the length of the arterial streets should allow for private and charter schools without over restrictions. The amendment is designed to ensure that an extraordinary amount of traffic is not introduced to those arterial streets.

In response to a question by Commissioner Barnett concerning schools that would like to expand or schools which would compliment each other, Mr. Grant explained that in districts defined in the amendment, the spacing requirement would have to be met. Mr. Grant explained that staff differentiates between a private school which is designed for the purpose of education and another business offering classes as training through their business.

Commissioner Schwartz opined that by precluding other property districts from this ordinance, these charter schools will be forced to move into congested urban areas.

Mr. Grant remarked that this amendment would not guarantee that schools would be influenced to go to appropriate locations where there would be no impacts. What it will do is ensure that there is spacing in between these uses in areas where the streets have not been designed for that level of traffic.

Mr. Eric Emmert, representing the Arizona Charter School Association, addressed the Commission. He stated that this issue came to the Charter School Association's attention about thirty minutes before the Planning Commission session, via a reporter asking for comments. He noted that they did not have the opportunity to review the amendment and did not have the information concerning the context of the issue. He requested that the issue be continued in order to give the Arizona Charter School Association Board of Directors to provide input into the process. He suggested that a two week continuance would be sufficient.

In response to a question by Commissioner Heitel, Mr. Emmert explained that the Association represents approximately 200 schools and is typically a State policy organization. The Arizona Charter School Association does not monitor city issues, but would like the opportunity to address the issue because it would impact a number of their institutions.

Mr. Bob Vairo, Coalition of Pinnacle Peak, reminded the Commission that the issue is a matter of policy and suggested that the Arizona Association of Charter Schools could take their case before City Council. He requested that the amendment increasing the shielded light poles to sixteen feet be lowered. He noted that regulation of the number of students at a school would be difficult and there should not be a stipulation for the number of students enrolled. Mr. Vairo opined that the amendment would be appropriate for the large lot areas.

Mr. Jeff Maynard, Executive Director and Founder of Star Struck Academy in Scottsdale, addressed the Commission. He opined that the amendment would hinder student's ability to have school choice, prevent charter schools from working together to share facilities, and cause problems for charter school operators who hold more than one charter. He requested a continuance in order to have time to review the material.

Chairman Steinberg noted that Patricia Kettle is in favor of the text amendment.

Graham Kettle, 24928 North 114th Street, addressed the Commission. He pointed out the positive aspects of the amendment including ensuring public safety. He opined that the text amendment represents a much needed addition to the ordinance and urged the Planning Commission to recommend approval.

Commissioner Barnett expressed concern that the amendment as worded would create problems in many scenarios. In response to a question by Commissioner Barnett, Mr. Grant explained that other areas regulate schools in a variety of ways and it is not unusual for many types of businesses to have minimum distance criteria where there may be compatibility issues.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 1-TA-2006 WITH THE CHANGE ON STIPULATION L WHICH SHOULD SAY 2640 FEET; A HALF MILE.

Commissioner O'Neill expressed favor for continuing the matter in order to provide the opportunity to obtain more information from the Arizona Association of Charter Schools, which may enlighten the perspective on what the best choice in handling the matter may be. He will not be supporting the motion.

Commissioner Steinke stated that he has no issue with the distance requirement but felt he had a lack of knowledge concerning the number of students attending the institutions. Noting that several individuals only recently became aware of the issue, and have not been provided the opportunity to state their position, Commissioner Steinke is in favor of a continuance and will not support the motion.

Commissioner Barnett agreed with fellow Commissioners in supporting a continuance. He stated that regulation of an industry should not occur without input from the industry representatives. He noted that he did not want to vote against the motion and inquired whether it would be appropriate to abstain. Ms. Scott advised that Commissioner Barnett could opt to abstain.

In response to a question by Chairman Steinberg, Mr. Grant clarified that there was not an active participation from any of the charter school or private school constituents; staff relied on the legal notification process. He noted that staff would be happy to work with any group that has an interest in participating in the process.

Vice-Chairman Heitel commented that he was sympathetic to everyone having input on the issue, noting that the issue has been in the works for many years. He expressed disbelief that someone involved in the charter school process was not aware of the discussion. He suggested that opportunity for clarifications and concerns could be presented to City Council.

Vice-Chairman Heitel stated that he would second the motion if the maker of the motion would bring the spacing back down to a quarter-of-a-mile, 1320. He opined that he would prefer a half-mile but believed a great deal of work had been done to come to a compromise and it should be left as written.

**COMMISSIONER SCHWARTZ AMENDED THE MOTION TO READ: A-
QUARTER-MILE.**

Chairman Steinberg asked that a stipulation be included regarding the lighting brought up by Mr. Vairo. Mr. Grant stated that the lighting was not noticed as part of this hearing and the issue would be re-noticed for discussion.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 1-TA-2006 AS STIPULATED, AND REQUESTED THAT STAFF ADD A NOTE TO CITY COUNCIL INDICATING THAT THE PLANNING COMMISSION WOULD LIKE FOR COUNCIL TO LOOK AT A REDUCTION IN THE HEIGHT OF THE LIGHTING, ALTHOUGH LIGHTING IS NOT PART OF THE RECOMMENDATION. SECONDED BY VICE-CHAIRMAN HEITEL, THE MOTION CARRIED WITH A VOTE OF FOUR (4) TO TWO (2). COMMISSIONER BARNETT ABSTAINED. COMMISSIONER STEINKE AND COMMISSIONER O'NEILL DISSENTED.

Ms. Bronski remarked that staff still needed the findings on the prior use permit for Next.

COMMISSIONER BARNETT AMENDED THE MOTION FOR 28-UP-2004 TO INCLUDE THE FINDINGS OF FACT ON THE CONDITIONAL USE PERMIT. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

WRITTEN COMMUNICATION

None.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission adjourned at 8:37 p.m.

Respectfully submitted,
A/V Tronics, Inc.

APPROVED